

AMY KLOBUCHAR  
MINNESOTA

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JOINT ECONOMIC COMMITTEE  
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RULES AND ADMINISTRATION

United States Senate  
WASHINGTON, DC 20510

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July 17, 2014

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th St. SW  
Washington, DC 20554

Dear Chairman Wheeler:

The Internet has already transformed the way Americans conduct business, visit their doctor, earn an education and engage in commerce. Even more promising is the potential that the Internet holds to continue driving economic growth, spurring innovation, giving a voice to those who have been silenced and expanding opportunities across the globe. For the Internet to remain the great tool of democracy, it must be protected and remain free. As the Federal Communications Commission (FCC) considers new open Internet rules, it is essential that they are clear and effective.

In the wake of the ruling by the U.S. Court of Appeals for the D.C. Circuit earlier this year, the FCC must of course take action and aggressively pursue new open Internet rules. Since the court's decision, hundreds of thousands of individuals, businesses, consumer advocates, interest groups and legal experts have contacted the FCC to provide feedback on how best to protect an open Internet that will continue to protect consumers and encourage economic growth. I believe there are legitimate concerns about the May 2014 FCC proposed rule regarding the authority under existing law the FCC may use to make critical decisions regarding the future regulatory landscape and the types of business agreements that could be permitted.

Internet users, consumers and businesses deserve a level playing field when it comes to accessing and using the Internet. That's why I strongly encourage you to consider all of the ideas presented that would ensure that online discrimination does not become the reality of the Internet, including asserting the FCC's authority under Title II of the Communications Act to meet this goal.

In addition, as Chairman of the Senate Judiciary Antitrust, Competition Policy and Consumer Rights Subcommittee, I have a strong interest in ensuring robust competition for all users of the Internet. An open and fair Internet marketplace is essential to that end and antitrust law alone cannot prevent discrimination and anticompetitive practices, nor does it account for important societal values of consumer protection and civic engagement.

In order for the Internet to remain open and free, we must have clear rules of the road in place that protect consumers and provide the private sector with the certainty needed to invest and innovate.

Thank you for your consideration and your attention to this issue.

Sincerely,



Amy Klobuchar  
United States Senator



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 1, 2014

The Honorable Amy Klobuchar  
United States Senate  
302 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Klobuchar:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

The *Notice* asks a fundamental question: "What is the right public policy to ensure that the Internet remains open?" I am grateful that Americans have answered the call. We have received over one million comments on the *Notice* from the American public. The overwhelming response to this issue demonstrates how important it is to reinstate strong rules that will stop broadband providers from limiting Internet openness.

The Commission has struggled for over a decade with how best to protect and promote an open Internet. While there has been bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today faced with the worst case scenario: we have no Open Internet rules in place to stop broadband providers from limiting Internet openness. The *status quo* is unacceptable. The Commission has already found, and the court has agreed, that broadband providers have economic incentives and technological tools to engage in behavior that can limit Internet openness and harm consumers and competition. As such, the Commission must craft meaningful rules to protect the open Internet, and it must do so promptly. I can assure you that we will utilize the best tools available to ensure the Commission adopts effective and resilient open Internet rules. Unless and until the Commission adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC.



With respect to the legal foundation of the rules, our *Notice* proposes that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. Nevertheless, as you suggest in your letter, the Commission is also seriously considering moving forward to adopt rules using Title II of the Communications Act as the foundation for our legal authority. The *Notice* asks specific questions about Title II, including whether the Commission should 1) revisit its classification of Broadband Internet Access as an information service; or 2) separately identify and classify as a telecommunications service a service that “broadband providers . . . furnish to edge providers,” as proposed by Mozilla in a May 5, 2014, Petition filed with the agency. The *Notice* seeks comment on the benefits of both Section 706 and Title II, including the benefits of one approach over the other, to ensure the Internet remains an open platform for innovation and expression.

With respect to the substance of the rules, the proposals and questions in the *Notice* are designed to elicit a record that will give us a foundation to adopt strong, enforceable rules to protect the open Internet and prevent broadband providers from harming consumers or competition. I am especially sensitive to concerns about paid prioritization arrangements, as well as the potential such arrangements have for creating an Internet that is fast for a few and slow for everyone else. Let me be crystal clear: there must only be one Internet. It must be fast, robust, and open for everyone. The *Notice* addresses this issue head-on, even asking if paid prioritization should be banned outright. It also proposes clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers, and innovators. Small companies and startups must be able to reach consumers with their innovative products and services, and they must be protected against harmful conduct by broadband providers.

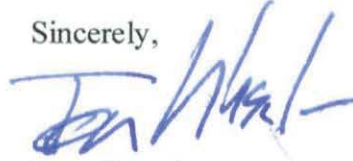
The *Notice* includes a number of proposals designed to empower consumers and small businesses who may find themselves subject to harmful behavior by a broadband provider. For example, the Court of Appeals did uphold our existing transparency rule, and the *Notice* proposes to strengthen that rule to require that networks disclose *any* practices that could change a consumer’s or a content provider’s relationship with the network. The *Notice* proposes the creation of an ombudsperson to serve as a watchdog and advocate for start-ups, small businesses, and consumers. And the *Notice* seeks comment on how to ensure that all parties, and especially small businesses and start-ups, have effective access to the Commission’s dispute resolution and enforcement processes.

This *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the many questions raised in the *Notice*. To that end, in an effort to maximize public participation in this proceeding, we have established an Open Internet e-mail address – [openinternet@fcc.gov](mailto:openinternet@fcc.gov) – to ensure that Americans who may not otherwise have the opportunity to participate in an FCC proceeding can make their voices heard. In addition, to ensure sufficient opportunity for broad public comment, we have provided a lengthy comment and reply period through September 10, 2014, that will allow everyone an opportunity to participate.

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Again, I appreciate your deep interest in this matter and look forward to continued engagement with you as the proceeding moves forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish at the end.

Tom Wheeler